IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25912 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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N.A.PATHAN - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AS SUPEHIA for Petitioner(s) : 1,
MR LB DABHI AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 08/03/2007

ORAL JUDGMENT

1. Heard the learned advocate, Mr.Supehia, appearing on behalf of petitioner.

2. Rule. Learned AGP, Mr.Dabhi, waives service of rule on behalf of respondents.

3. Brief facts of the present petition are that petitioner is serving as Unarmed Police Constable in Amreli Taluka Police Station w.e.f. 1.8.1976. Initially, he was appointed in City of Ahmedabad w.e.f. 1.8.1976. Thereafter, he was promoted by an order dated 22.7.2002 in the post of Head Constable with deemed date 16.12.1998. The aforesaid order of promotion was cancelled by the respondent by order dated 19.5.2006 as communicated to the petitioner by the respondent. Thereafter, petitioner was suspended by order dated 3.8.2002 and suspension order was revoked subsequently and petitioner was reinstated in service on 16.3.2006. Thereafter, he was transferred to Amreli District on 20.3.2006.

4. Learned advocate, Mr.Supehia, submitted that order which has been passed in favour of petitioner giving benefit of promotion w.e.f.

16.12.1998 by order dated 22.7.2002 which has been cancelled because of the FIR No.3137/2002 but, this order has been cancelled without giving any reasonable opportunity of hearing to the petitioner. This order dated 19.5.2006 communicated to the petitioner. Therefore, learned advocate, Mr.Supehia,submitted that if any adverse orders passed against concerned employee having civil consequences, then, principles of natural justice must have to be observed by the respondent authority. He relied upon the decision of the Division Bench of this Court in LPA No.562/1996 in SCA No.3/1996 dated 11.3.2005.

5. I have considered the submissions made by both the learned advocates and considering the facts which are undisputed between the parties to the effect that order of promotion issued in favour of petitioner dated 22.7.2002 w.e.f. 16.12.1998 but, learned AGP,Mr.Dabhi, submitted that this order has not been communicated to the petitioner and before that, because of the FIR

filed against the petitioner, in respect to the incident occurred in June,2002, the order which was not communicated to the petitioner has been cancelled by the respondent, therefore, there is no need to give any hearing to the petitioner. I have considered this submissions made by learned AGP, Mr.Dabhi, also while keeping in mind one facts that order is already passed by respondent on 22.7.2002 giving deemed date of promotion w.e.f. 16.12.1998. That order has been cancelled without giving any opportunity to the petitioner. A moment the order has been passed by respondent authority it having the effect in favour of petitioner which has been cancelled, without giving opportunity to the petitioner. Therefore, considering this factual aspect the communication dated 19/5/2006 is hereby set aside as it is contrary to the principles of natural justice considering the decision of the Division Bench, as referred above and accordingly, order of cancellation of promotion dated 22.7.2002 is hereby quashed and set aside. Accordingly, present petition is allowed. Rule is made

absolute to that extent. However, it is open for the respondent to pass appropriate orders in accordance with the services rules after giving reasonable opportunity of hearing to the petitioner.

(H.K.RATHOD,J.)

(vipul)